

SENATE BILL 832

By Burchett

AN ACT to amend Tennessee Code Annotated, Title 56, relative to insurance fraud.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF TENNESSEE:

SECTION 1. Tennessee Code Annotated, Title 56, is amended by adding Sections 2 through 12 of this act as a new chapter thereto.

SECTION 2. The provisions of this chapter shall be known and may be cited as the "Tennessee Insurance Fraud Prevention and Investigation Act of 2001".

SECTION 3. The department of commerce and insurance shall establish an insurance fraud division.

SECTION 4. As used in this chapter, unless the context otherwise requires:

(1) "Commissioner" means the commissioner of commerce and insurance.

(2) "Department" means the department of commerce and insurance.

(3) "Division" means the insurance fraud division of the department of commerce and insurance.

(4) "Fraudulent insurance act" means any act or omission committed by a person if the person knowingly, and with intent to defraud, presents, causes to be presented, or prepares with knowledge or belief that it will be presented, to or by an insurer, self-

insurer, self-insurance fund, servicing corporation, purported insurer, broker, or any agent thereof, any written statement as part of, or in support of, an application for the issuance of, or the rating of, any insurance policy, or a claim for payment or other benefit pursuant to any insurance policy, which the person knows to contain materially false information concerning any fact material thereto or if the person conceals, for the purpose of misleading another, information concerning any fact material thereto.

(5) "Insurance policy" or "insurance contract" means any contract of insurance, indemnity, dental service, vision service, medical or hospital service, suretyship, or annuity issued, proposed for issuance, or intended for issuance by any person, and includes any contract under which funds are deposited with or held by an insurer or its affiliated corporation in connection with the issuance or renewal of any insurance coverage.

(6) "Person" means any individual, corporation, association, partnership, reciprocal exchange, inter-insurer, Lloyds insurer, fraternal benefit society, and any other legal entity having an interest in transactions related to the business of insurance, including agents, brokers and adjusters. "Person" also means medical service plans, hospital service corporations, hospital and medical service corporations, dental service corporations, vision service plans, as defined in chapters 27-31 of this title, and automobile clubs and associations, as defined in title 55, chapter 18. For purposes of this chapter, such plans, corporations, clubs and associations as hereinabove set out shall be deemed to be engaged in the business of insurance.

SECTION 5. (a) If, by its own inquiries or as a result of complaints, the department or its division has reason to believe that a person has engaged in, or is engaging in, a fraudulent insurance act, an act or practice that violates title 56, chapter 8, part 1 or §39-14-133, or an act or practice punishable under §56-8-109, it may administer oaths and affirmations, request the attendance of witnesses or proffering of matter, and collect evidence. The department shall not

compel the attendance of any person or matter in any such investigation except pursuant to subsection (d).

(b) If the matter that the department or its division seeks to obtain by request is located outside the state, the person so requested may make it available to the division or its representative to examine the matter at the place where it is located. The division may designate representatives, including officials of the state in which the matter is located, to inspect the matter on its behalf, and it may respond to similar requests from officials of other states.

(c)(1) The department or its division may request that any person refusing to comply with any such request be ordered by any court of competent jurisdiction to provide the testimony or matter. The court shall not order such compliance unless the department or its division has demonstrated to the satisfaction of the court that the testimony of the witness or the matter under request has a direct bearing on the commission of a fraudulent insurance act, on a violation of title 56, chapter 8, part 1 or §39-14-133, or on an act or practice punishable under §56-8-109 or is pertinent and necessary to further such investigation.

(2) Except in a prosecution for perjury, any person complying with a court order to provide testimony or matter, after asserting a privilege against self-incrimination to which such person is entitled by law, may not be subjected to a criminal proceeding or to a civil penalty with respect to the act concerning which such person is required to testify or produce relevant matter.

(3) In the absence of fraud or bad faith, a person is not subject to civil liability for libel, slander, or any other relevant tort by virtue of filing reports, without malice, or furnishing other information, without malice, required by this act or required by the department or division under the authority granted in this act, and no civil cause of action of any nature shall arise against such person:

(A) For any information, relating to suspected fraudulent insurance acts, furnished to or received from law enforcement officials, their agents, or employees;

(B) For any information, relating to suspected fraudulent insurance acts, furnished to or received from other persons subject to the provisions of this act; or

(C) For any such information furnished in reports to the department, division, the National Insurance Crime Bureau, or the National Association of Insurance Commissioners.

(4) In addition to the immunity granted in subdivision (3), persons identified as designated employees, whose responsibilities include the investigation and disposition of claims relating to suspected fraudulent insurance acts, may share information relating to persons suspected of committing fraudulent insurance acts with other designated employees employed by the same or other insurers whose responsibilities include the investigation and disposition of claims relating to fraudulent insurance acts, provided the department has been given written notice of the names and job titles of such designated employees prior to such designated employees sharing information. Unless the designated employees of the insurer act in bad faith or in reckless disregard for the rights of any insured, neither the insurer nor its designated employees are civilly liable for libel, slander, or any other relevant tort, and a civil action does not arise against the insurer or its designated employees:

(A) For any information provided to an insurer related to suspected fraudulent insurance acts; or

(B) For any information provided to an insurer relating to suspected fraudulent insurance acts that is provided to the National Insurance Crime Bureau or the National Association of Insurance Commissioners.

Provided, however, that the qualified immunity against civil liability conferred on any insurer or its designated employees shall be forfeited with respect to the exchange or publication of any defamatory information with third persons not expressly authorized by this act to share in such information.

(5) The commissioner of commerce and insurance and any employee or agent of the department or division, when acting without malice and in the absence of fraud or bad faith, is not subject to civil liability for libel, slander, or any other relevant tort, and no civil cause of action of any nature exists against such person by virtue of the execution of official activities or duties of the department under this act or by virtue of the publication of any report or bulletin related to the official activities or duties of the department or division under this act.

(6) This act does not abrogate or modify in any way any common law or statutory privilege or immunity otherwise enjoyed by any person.

(d) The department's papers, documents, reports, or evidence relative to the subject of an investigation under this act are confidential and exempt from the provisions of title 10, chapter 7 until such investigation is completed or ceases to be active. For purposes of this act, an investigation is considered "active" while the investigation is being conducted by the department with a reasonable, good faith belief that it could lead to the filing of administrative, civil, or criminal proceedings. An investigation does not cease to be active if the department is proceeding with reasonable dispatch and has a good faith belief that action could be initiated by the department or other administrative or law enforcement agency. After an investigation is completed or ceases to be active, portions of records relating to the investigation shall remain exempt from the provisions of title 10, chapter 7 if disclosure would:

- (1) Jeopardize the integrity of another active investigation;
- (2) Impair the safety and soundness of an insurer;
- (3) Reveal personal financial information;

(4) Reveal the identity of a confidential source;

(5) Defame or cause unwarranted damage to the good name or reputation of an individual or jeopardize the safety of an individual; or

(6) Reveal investigative techniques or procedures.

Further, such papers, documents, reports, or evidence relative to the subject of an investigation under this act shall not be subject to discovery until the investigation is completed or ceases to be active. This exemption is subject to the provisions of title 10, chapter 7. Department or division investigators shall not be subject to subpoena in civil actions by any court of this state to testify concerning any matter of which they have knowledge pursuant to a pending insurance fraud investigation by the division.

(e) Any person, other than an insurer, agent, or other person licensed under title 56, chapter 6, or an employee thereof, having knowledge or who believes that a fraudulent insurance act or any other act or practice which, upon conviction, constitutes a felony or a misdemeanor under the code, or under §39-14-133, is being or has been committed may send to the division a report or information pertinent to such knowledge or belief and such additional information relative thereto as the department may request. Any professional practitioner licensed or regulated by the department, except as otherwise provided by law, any medical review committee as defined in §63-6-219, any private medical review committee, and any insurer, agent, or other person licensed under the code, or an employee thereof, having knowledge or who believes that a fraudulent insurance act or any other act or practice which, upon conviction, constitutes a felony or a misdemeanor under the code, or under §39-14-133, is being or has been committed shall send to the division a report or information pertinent to such knowledge or belief and such additional information relative thereto as the division may require. The division shall review such information or reports and select such information or reports as, in its judgment, may require further investigation. It shall then cause an independent examination of the facts surrounding such information or report to be made to determine the

extent, if any, to which a fraudulent insurance act or any other act or practice which, upon conviction, constitutes a felony or a misdemeanor under the code, or under §39-14-133, is being committed. The division shall report any alleged violations of law which its investigations disclose to the appropriate licensing agency and district attorney general or other prosecuting agency having jurisdiction with respect to any such violation, as provided in §56-8-109. If prosecution by the district attorney general or other prosecuting agency having jurisdiction with respect to such violation is not begun within sixty (60) days of the division's report, the district attorney general or other prosecuting agency having jurisdiction with respect to such violation shall inform the division of the reasons for the lack of prosecutions.

(f) Division investigators shall have the power to make arrests for criminal violations established as a result of investigations only. The general laws applicable to arrests by law enforcement officers of this state shall also be applicable to such investigators. Such investigators shall have the power to execute arrest warrants and search warrants for the same criminal violations; to serve subpoenas issued for the examination, investigation, and trial of all offenses determined by their investigations; and to arrest upon probable cause without warrant any person found in the act of violating any of the provisions of applicable laws. Investigators empowered to make arrests under this section shall be empowered to bear arms in the performance of their duties. In such a situation, the investigator must be certified in compliance with all applicable laws set forth in title 38, chapter 8, and all rules and regulations promulgated pursuant thereto.

(g) It is unlawful for any person to resist an arrest authorized by this act or in any manner to interfere, either by abetting or assisting such resistance or otherwise interfering, with division investigators in the duties imposed upon them by law or department rule.

SECTION 6. If the owner of a ship or vessel or of property laden or pretended to be laden on board the same, or if any other person concerned in the lading or fitting out of a ship or vessel, makes out or exhibits, or causes to be made out or exhibited, a false or fraudulent

invoice, bill of lading, bill or parcels or other false estimates of any goods or property laden or pretended to be laden, on board such ship or vessel, with intent to injure and defraud an insurer of such ship, vessel or property, or of any part thereof, the person shall be punished as in the case of theft.

SECTION 7. If a master, other officer, or mariner of a ship or vessel, makes or causes to be made, or swears to any false affidavit or protest, or if an owner or other person concerned in such ship or vessel or in the goods and property laden on board the same, procures any such false affidavits or protest to be made, or exhibits the same, with intent to injure, deceive or defraud an insurer of such ship or vessel, or of any goods or property laden on board the same, such person shall be punished as in the case of theft.

SECTION 8. Any person who willfully and with intent to injure or defraud the insurer sets fire to or burns or attempts to do so or who causes to be burned or who aids, counsels or procures the burning of any building, structure or personal property, of whatsoever class or character, whether the property of such person or of another, which shall at the time be insured by any person against loss or damage by fire, shall be punished as in the case of theft.

SECTION 9. (a)(1) Any person who, with the intent to injure, defraud, or deceive any insurer:

(A) Presents or causes to be presented any written or oral statement as part of, or in support of, a claim for payment or other benefit pursuant to an insurance policy, knowing that such statement contains any false, incomplete, or misleading information concerning any fact or thing material to such claim;

(B) Prepares or makes any written or oral statement that is intended to be presented to any insurer in connection with, or in support of, any claim for payment or other benefit pursuant to an insurance policy, knowing that such statement contains any false, incomplete, or



misleading information concerning any fact or thing material to such claim; or

(C) Knowingly presents, causes to be presented, or prepares or makes with knowledge or belief that it will be presented to any insurer, purported insurer, servicing corporation, insurance broker, or insurance agent, or any employee or agent thereof, any false, incomplete, or misleading information or written or oral statement as part of, or in support of, an application for the issuance of, or the rating of, any insurance policy, or who conceals information concerning any fact material to such application, shall be punished as in the case of theft.

(2) All claims and application forms shall contain a statement that is approved by the department that clearly states in substance the following: "Any person who knowingly and with intent to injure, defraud, or deceive any insurer files a statement of claim or an application containing any false, incomplete, or misleading information shall be punished as in the case of theft."

(b) Any physician licensed under title 63, chapter 6, osteopath licensed under title 63, chapter 9, chiropractor licensed under title 63, chapter 4, or other practitioner licensed under the laws of this state who knowingly and willfully assists, conspires with, or urges any insured party to fraudulently violate any of the provisions of this act or title 55, chapter 12, or title 56, chapter 7, parts 11, 12 or 13, or any person who, due to such assistance, conspiracy, or urging by said physician, osteopath, chiropractor, or practitioner, knowingly and willfully benefits from the proceeds derived from the use of such fraud, shall be punished as in the case of theft. In the event that a physician, osteopath, chiropractor, or practitioner is adjudicated guilty of a violation of this act, the appropriate licensing authority shall hold an administrative hearing to consider the

imposition of administrative sanctions as provided by law against said physician, osteopath, chiropractor, or practitioner.

(c) Any attorney who knowingly and willfully assists, conspires with, or urges any claimant to fraudulently violate any of the provisions of this act or title 55, chapter 12, or title 56, chapter 7, parts, 11, 12 or 13, or any person who, due to such assistance, conspiracy, or urging on such attorney's part, knowingly and willfully benefits from the proceeds derived from the use of such fraud, shall be punished as in the case of theft.

(d) No person or governmental unit licensed under title 68, chapter 11, part 2, to maintain or operate a hospital, and no administrator or employee of any such hospital, shall knowingly and willfully allow the use of the facilities of said hospital by an insured party in a scheme or conspiracy to fraudulently violate any of the provisions of this act or any other provision of law. Any hospital administrator or employee who violates this act shall be punished as in the case of theft. Any adjudication of guilt for a violation of this subsection, or the use of business practices demonstrating a pattern indicating that the spirit of the law set forth in this act or title 55, chapter 12, or title 56, chapter 7, parts 11, 12 and 13, is not being followed, shall be grounds for suspension or revocation of the license to operate the hospital or the imposition of any other sanctions in accordance with §68-11-207.

(e) Any insurer damaged as a result of a violation of any provision of this act when there has been a criminal adjudication of guilt shall have a cause of action to recover compensatory damages, plus all reasonable investigation and litigation expenses, including attorneys' fees, at the trial and appellate courts.

(f) For the purposes of this section, "statement" includes, but is not limited to, any notice, statement, proof of loss, bill of lading, invoice, account, estimate of property damages, bill for services, diagnosis, prescription, hospital or doctor records, X-ray, test result, or other evidence of loss, injury, or expense.

(g) The provisions of this act shall also apply as to any insurer or adjusting firm or its agents or representatives who, with intent, injure, defraud, or deceive any claimant with regard to any claim. The claimant shall have the right to recover the damages provided in this act.

SECTION 10. It is unlawful for any person, in the person's individual capacity or in the person's capacity as a public or private employee, or for any firm, corporation, partnership, or association, to solicit any business in or about any hospital licensed under title 68, chapter 11, part 2, any courts of this state, in any public institution, in any public place, upon any public street or highway, or any private institution, or upon private property of any character whatsoever for the purpose of making motor vehicle tort claims or claims for personal injury protection benefits required by title 55, chapter 12, or title 56, chapter 7, parts 11, 12, and 13. Any person who violates the provisions of this section shall be punished as in the case of theft.

SECTION 11. It is unlawful for any attorney to solicit any business relating to the representation of persons injured in a motor vehicle accident for the purpose of filing a motor vehicle tort claim or a claim for personal injury protection benefits required by title 55, chapter 12, or title 56, chapter 7, parts 11, 12 and 13. The solicitation by advertising of any business by an attorney relating to the representation of a person injured in a specific motor vehicle accident is prohibited by this section. Any attorney who violates the provisions of this section shall be punished as in the case of theft. Whenever the board of professional responsibility of the Tennessee supreme court finds probable cause to believe that an attorney is guilty of a violation of this section, the board shall forward to the appropriate district attorney general a copy of the finding of probable cause and the report being filed in the matter. This section shall not be interpreted to prohibit advertising by attorneys which does not entail a solicitation as described in this section and which is permitted by the rules regulating the Tennessee bar as promulgated by the Tennessee supreme court and the board of professional responsibility.

SECTION 12 (a) Except as otherwise provided by law, any person who, with intent to prevent identification by the true owner, removes, erases, defaces, or otherwise alters any serial number or other mark of identification placed on any item of personal property by the manufacturer or owner thereof is guilty of a Class A misdemeanor.

(b) Any person who possesses any item of personal property with the knowledge that the serial number or other mark of identification placed thereon by the manufacturer or owner thereof has been removed, erased, defaced, or otherwise altered with intent to prevent identification by the true owner is guilty of a Class A misdemeanor.

(c) Any person who, with intent to injure, defraud, or deceive any motor vehicle insurer, including any statutorily created underwriting association or pool of motor vehicle insurers, presents or causes to be presented any written application, or written statement in support thereof, for motor vehicle insurance knowing that the application or statement contains any false, incomplete, or misleading information concerning any fact or matter material to the application commits a Class A misdemeanor.

(d) This section shall not in any way affect the provisions of §§ 39-14-133, 39-14-134, 55-5-111 and 55-5-112.

SECTION 13. This act shall take effect July 1, 2001, the public welfare requiring it.